

Review Requirements Checklist
VIATICAL SETTLEMENTS

REVIEW REQUIREMENTS	REFERENCES	COMMENTS
General Filing Requirements		
Transmittal Letter	14 VAC 5-100-40	Must be submitted in duplicate for each filing, describing each form, its intended use and kind of insurance provided.
	14 VAC 5-100-40 1	Forms submitted and described in transmittal letter must have a number that consists of digits, letters, or a combination of both. (Our system limits the number of characters to 20, including spaces, comas, hyphens, etc.)
	14 VAC 5-100-40 2	Must clearly indicate if forms are replacements, revisions, or modifications of previously approved forms and describe the exact changes that are intended.
	14 VAC 5-100-40 3	Certification of Compliance signed by General Counsel or officer of company or attorney or actuary representing company is required.
	14 VAC 5-100-40 5	Description of market for which the form is intended.
	14 VAC 5-100-40 6	At least one copy of each form must be included in the filing. A duplicate copy of forms must be submitted if the company wants a "stamped" copy of forms for its records. A stamped self-addressed return envelope is required. The letter of transmittal must be addressed to, State Corporation Commission, Bureau of Insurance, P. O. Box 1157, Richmond, VA 23218.
	Administrative Letter 1983-7	Must include the name and Individual NAIC number of the company for which the filing is made.
Forms		
Form number	14 VAC 5-100-50 1	Form number must appear in lower left-hand corner of first page of each form.
Company Name & Address	14 VAC 5-100-50 2	Full and proper corporate name (including "Inc.") must prominently appear on cover sheet of all policies and other forms. Home office address of insurer must prominently appear on each policy.
Final form	14 VAC 5-100-50 3	Form must be submitted in the final form in which it will be issued and completed in "John Doe" fashion to indicate its intended use.
Application	14 VAC 5-100-50 4	Any policy, which is to be issued with an attached application, must be filed with a copy of the application completed in "John Doe" fashion to indicate its intended use. (If application was previously approved, advise date of approval.)
Type Size	14 VAC 5-100-50 5	Accident and Sickness forms must be printed with type size of at least ten-point type. All other forms must be printed with type size of at least eight-point.
Arbitration	§ 38.2-312	Contract may not deprive courts of Virginia jurisdiction in actions against insurer. Arbitration may not be binding.
Fraud Notice	§ 38.2-316 D 1	Title 38.2 of the Insurance Code does not define "Insurance Fraud". Any notice regarding insurance fraud is in non-compliance with this section of the Code. Variations in a notice warning of consequences of making fraudulent statements are acceptable. The notice may disclose that it does not apply in Virginia or may disclose states where applicable.

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Disclosure	<p>§ 38.2-6007 B § 38.2-6007 C</p> <p>(Disclosure forms the same as the one found in 14 VAC 5-71-35 C 2 do not have to be filed.)</p>	<p>A viatical settlement provider shall provide the viator with specific disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker, and provide the information stated in the law and regulation.</p> <p>The disclosures shall be made no later than the date on which the contract is signed by all parties. These disclosures can be combined with the disclosures required by 14 VAC 5-71-35 C.</p>
Informed Consent	§ 38.2-6008 A 1	<p>A viatical settlement provider entering into a viatical settlement contract shall</p> <p>a. If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and</p> <p>b. A document in which the insured consents to the release of his medical records to a viatical settlement provider, viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured. The consent for the release of medical records shall only be obtained for the insurance company if the life insurance policy covering the insured was issued within 48 months of the date of the viator's application for the viatical settlement contract.</p>
Consent Form	§ 38.2-6008 A 5	<p>Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that he has a full and complete understanding of the benefits of the life insurance policy, acknowledges that he is entering into the viatical settlement contract freely and voluntarily and, for persons who are chronically or terminally ill, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.</p>
Unconditional Refund Provision	§ 38.2-6008 C	<p>All viatical settlement contracts shall provide the viator with an unconditional right to rescind the contract for at least 15 calendar days from the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser.</p>
	§ 38.2-6008 E	<p>Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to subdivision A 6 of § 38.2-6007 renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and</p>

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		accepted by the viator.
	§ 38.2-6008 F 14 VAC 5-71-90 D	Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this Commonwealth or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.
	§ 38.2-6011 B 14 VAC 5-71-35 E	Contracts and applications are required to contain the following language. 1. "Any person who knowingly presents false information in an application for insurance or viatical settlement contract may be guilty of a crime and subject to prosecution." 2. "Viatical settlement transactions between a viatical settlement broker or viatical settlement provider and a resident of this Commonwealth who is a viator or insured are subject to regulation by the State Corporation Commission acting through the Bureau of Insurance pursuant to provisions comprising Chapter 60 (§ 38.2-6000 et seq.) of Title 38.2 of the Code of Virginia. Any person damaged by the acts of a person in violation of this chapter may bring a civil action in a court of competent jurisdiction against the person committing the violation.".
	§ 38.2-6012 A	Any person damaged by the acts of a person in violation of this chapter may bring a civil action against the person committing the violation in a court of competent jurisdiction.
	§ 38.2-6012 B	The Commission shall have no jurisdiction to adjudicate controversies between licensees, or between a licensee under this chapter and a viator or an insured.
	§ 38.2-6012 C	Contractual disputes arising from the viatical settlement shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators, provided that the application of another state's laws shall not impair or limit the ability of the Commission to apply and enforce the provisions of this chapter or Article 6.1 (§ 38.2-1865.1 et seq.) of Chapter 18 of this title in its regulation of transactions with a resident of this

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		Commonwealth.								
Minimum Face Amount Valuations	14 VAC 5-71-60 A	<p>In order to assure that viators receive a reasonable settlement for viaticating a life insurance policy, the compensation for viaticating a policy shall be no less than the following payouts for insureds who are terminally or chronically ill.</p> <table><tr><td>Less than 6 months</td><td>80%</td></tr><tr><td>At least 6 but less than 12 months</td><td>70%</td></tr><tr><td>At least 12 but less than 18 months</td><td>65%</td></tr><tr><td>At least 18 but less than 25 months</td><td>60%</td></tr></table> <p>.</p>	Less than 6 months	80%	At least 6 but less than 12 months	70%	At least 12 but less than 18 months	65%	At least 18 but less than 25 months	60%
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	14 VAC 5-71-60 B	If the insured's life expectancy is Twenty-five months or more, the minimum payout shall be at least the greater of the cash surrender value at the time of the transaction or the accelerated death benefit in the policy.								
	14 VAC 5-71-60 C	The percentages stated above may be reduced by 5.0% for viaticating a policy written by an insurer rated less than the highest four categories by at least two rating agencies								
General Rules	14 VAC 5-71-90 A	For policies containing provisions for double or additional indemnity for accidental death, an additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or, in the absence of a designation, to the estate of the viator.								
	14 VAC 5-71-90 B	Payment of the proceeds of a viatical settlement pursuant to §38.2-5705 C of the Code of Virginia shall be by means of wire transfer to the account of the viator or by certified check.								
	14 VAC 5-71-90 C	Payment of the proceeds pursuant to a viatical settlement shall be made in a lump sum. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible.								

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Access to Administrative Letters, Administrative Orders, Regulations and Laws is available at
<http://www.state.va.us/scc/division/boi/webpages/boiadministrativeltrs.htm>

The Life and Health Division, Forms and Rates Section handles viatical settlements. Please contact this section at (804) 371-9110 if you have questions or need additional information about this line of insurance.

I hereby certify that I have reviewed the attached viatical settlement filing and determined that it is in compliance with the viatical settlement checklist.

Signed: _____

Name (please print): _____

Company Name: _____

Date: _____ Phone No: () _____ FAX No: () _____

E-Mail Address: _____